IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.1592 of 1999
Date of Decision: 30.10.2006

Yashpal ...Petitioner

Vs.

Ramesh Kante & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.B.R.Mahajan, & Mr.P.K.Longia, Advocates,
for the petitioner.

Mr.Premjit Kalia, Advocate,
for respondents No. 1 to 4 and 16.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against an order passed by the learned Additional District Judge, Amritsar allowing the application moved by the respondents herein under Section 153 of the Code of Civil Procedure (for short the Code) for the amendment of memo of appeal by impleading the petitioner Jaspal as party to the said appeal.

The Executing Court in order to satisfy the decree auctioned the house property in dispute on 20.4.1988. The property was sold for a sum of Rs.1,34,000/-. The objectors predecessors-in-interest of -respondents No.1 to 9 herein filed objections against the sale on 7.5.1988. Said objections were dismissed by the learned Trial Court on 23.4.1991 against

which an appeal was filed on 12.6.1991. Keeping in view the memo of parties as mentioned in the certified copy of the order of the Trial Court, the petitioner herein was not impleaded as one of the parties in the appeal filed against the confirmation of auction and dismissal of objections filed by respondent Nos.1 and 2.

Learned Additional District Judge by placing reliance on the judgment of this Court in the case of **State of Punjab and others Vs. Lekh Raj Saini and others 1992 P.L.R. 211** allowed the application by holding that the application under Section 153 of the Code can be filed at any time, and the consideration regarding the question of limitation is excluded. This Court was further pleased to hold in the said judgment that the parties are not benefited by not impleading necessary parties and therefore, technicalities should not come in the way of justice and fair play.

Mr. B.R.Mahajan, learned counsel for the petitioner has challenged the order primarily on the ground that the objections were dismissed on 23.4.1991, whereas the present application for impleading the petitioner herein as a party was filed on 25.5.1992 i.e. after the period of limitation had expired and therefore, a valuable right had accrued to the petitioner which would be defeated by impleading him as a party at this stage.

Learned counsel for the petitioner in support of this contention placed reliance on the judgment of Hon'ble Supreme Court in **Ch.Surat Singh (dead) and others Vs. Manohar Lal and others AIR 1971 SC 240** wherein Hon'ble Supreme Court has been pleased to lay down that where no ground is shown for not impleading a party the same cannot be allowed at belated stage. He also placed reliance on the judgment of this Court in **The New India Assurance Co. Ltd. Vs. Smt.Charanjit Kaur and others**

AIR 1989 Punjab and Haryana 264 to contend that where a person in whose favour a decree is passed by the Court against which an appeal has been filed and he is not impleaded as a party before the expiry of period of limitation a substantive right accrues to him which cannot be defeated by impleading as a party thereafter. The petitioner also placed reliance on the judgment of Hon'ble Supreme Court in **Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another AIR 1996 SC 642** to contend that amendment under Order 6 Rule 17 of the Code cannot be allowed to bring a cause of action which is barred by limitation.

I have considered the arguments raised by the learned counsel for the petitioners and gone through the cited judgments and find that in the said judgments on facts it has been held that due to delay it was not open to the appellant to implead the parties at the later stage. However, it may be noticed that subsequent to the passing of the judgment of the Hon'ble Supreme court there has been amendment in Order 41 Rule 20 of the Code by way of CPC Amendment Act, 1976 which permits the appellate court to implead a party at any stage of proceedings even after the expiry of period of limitation.

In view of the amendment in the Code of Civil Procedure no reliance can be placed on the judgments passed by the Hon'ble Supreme Court. Therefore, there is no error in the order passed by the learned Additional District Judge which may call for interference by this Court in exercise of revisional jurisdiction.

Dismissed.

(Vinod K.Sharma)
Judge

30.10.2006
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